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IN THE

Supreme Court of the United States.

THE GOAT AND SHEEPSKIN IMPORT COMPANY,
Petitioner,
against
THE UNITED STATES.

No. 361. 261.
October Term, 1906.

REPLY BRIEF FOR PETITIONER.

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APPEAL PRINTING COMPANY, 32-34 VESEY STREET, NEW YORK

IN THE

Supreme Court of the United States

THE GOAT AND SHEEPSKIN IMPORT COMPANY, Petitioner, against THE UNITED STATES.	No 261. October Term, 1906.

Reply Brief for Petitioner.

I.

Our opponent contends in Point I of his brief that "under the wool paragraphs of the tariff act the word 'wool' is manifestly used *in a generic sense to describe the fleece of the sheep.*" But there appears to be the following objections to the acceptance of that theory:

1. This theory is evidently based upon a mistaken belief or understanding as to the rules of law as laid down by this Court, to wit: upon the belief that terms in tariff acts may be interpreted according to some "generic" meaning, different from either their commercial meaning or their common meaning.

As Mr. Justice BRADLEY said, delivering the

opinion of the Court in *Robertson* v. *Solomon*, *130 U. S., 412, 415.*

> "The commercial designation, as we have frequently decided, is the first and most important designation to be ascertained in settling the meaning and application of the tariff laws (citing cases). But if the commercial designation fails to give an article its proper place in the classification of the law, then resort must necessarily be had to the common designation" (130 U. S., p. 415),

and that rule as Judge LACOMBE said in *In re Herrman* (C. C.), *52 Fed. Rep., 941-944*, has been "reiterated over and over again." Thus it has been reiterated in the following cases:

Swan v. Arthur, 103 U. S., 597, 598.
Nix v. Hedden, 149 U. S., 304, 306.
Seeberger v. Cahn, 137 U. S., 95.
Hedden v. Richard, 149 U. S., 346.
Lutz v. Magone, 153 U. S., 105.
Saltonstall v. Wiebusch, 156 U. S., 601.
Sonn v. Magone, 159 U. S., 417.
Patton v. United States, 159 U. S., 500.
United States v. Goldenberg, 168 U. S., 95.
United States v. Buffalo Natural Gas Fuel Co., 172 U. S., 339.
Chew Hing Lung v. Wise, 176 U. S., 156.
Hempstead v. United States (C.C.A.) 122 Fed. Rep., 538.

Moreover if the interpretation asked by the Government were to be adopted, it would sanction the taxation of certain merchandise as wool that was neither wool according to trade usage nor in fact

according to common understanding; because according to the definition quoted by the learned Attorney General, notably that on page 7 of his brief, a sheep's coat contains *both* wool and hair, the statement there being that:

> "Many of the mammilian animals have both wool and hair, but only in a very few is the wool in greater abundance than the hair proper. Chief of these is the sheep."

2. Our opponent contends on pages 10 and 11 of his brief that the generic use of the terms wool and hair (as referring respectively to the coat of the sheep on the one hand, and the coat of the camel goat and similar animals on the other) began "as far back as the tariff act of March 2, 1861"; but this claim does not seem to be borne out by the statutes, because in the tariff act of March 3, 1883 (22 Stat., c. 121), in the free list, Paragraph 719, as well as in the tariff act of October 1, 1890, Paragraph 605 of the free list, there was a provision for "Angora goat skins, raw, without the wool" (and this same provision for the free entry of "Angora goat skins raw, without the wool" appeared in the Revised Statutes, Section 2505, Paragraph 702, which was in force previous to the enactment of the tariff law of 1883)—which shows that in those enactments at least the growth on certain goat skins was treated and referred to for tariff purposes as wool and not as hair, and hence that Congress could not have used the term wool in those statutes in the "generic or racial" sense contended for by the Attorney General, as referring exclusively to the sheep's coat (see Treasury Decisions, Nos. 7544 and 18699).

3. From the Government standpoint this might

prove a disadvantageous theory to adopt, because it would make the provisions in paragraphs 354 and 355 for scoured and washed wools applicable *only* to the wools of the sheep, and would allow scoured or washed Angora goat hair or alpaca hair to come in at the low rate provided for similar hair *unwashed*.

It may be noted also that the word "wools," as used in Paragraph 360 has been construed by the Treasury Department to refer not only to the wool of the sheep but also to Russian Camels hair, Angora goat hair, etc., when imported *on the skin*.

Thus, according to T. D. 18834, the Secretary of the Treasury sanctioned the practice prevailing at the ports of New York, Philadelphia and Boston to apply the phrase "wools on the skin" to Angora goat hair when imported on the skin.

4. If it had been feasible or possible to have the hair removed by the Arabian shippers by the requisite lime soaking and drying or other process, before the goods were exported, it seems reasonably certain that this would have been done years ago, in order to avoid not only the payment of extra freight, but also to avoid the payment of duty upon commercially worthless material; hence it seems fair to assume that such removal of the hair in Arabian (whether by reason of the wildness of the country or lack of machinery facilities, or for other reason) has proven commercially impracticable.

If the Government's novel contention is sustained, then not only the pelt coverings, now taxed, but also those which are at present and which for a great many years have been admitted

free, will have to pay duty in the future, and it is manifest that with the scope or operation of duties on these raw materials, that are sold exclusively to tanners of shoe leather and glove leather, thus broadened and extended to embrace *all* the growth on these pelts, even though it be concededly hair, the burden of the extra duty would fall largely upon the buyers and users of the pelts, that is, upon the domestic shoe manufacturers and glove manufacturers, for the same reason that the burden of the duties charged in this case fall largely upon them. A decision, therefore, upholding the "generic" theory urged by the government, would, we believe, be disastrous to the shoe and leather trade of the country, which deserves encouragement and which already feels the burden of, and is encountering difficulties under, the present tariff, perhaps more than any other industry.

5. Reference to later paragraphs of the wool schedule, to wit., Paragraphs 365, 366, 367, 368-9, 370, 371 and 372-381, 382, wherein provision is made respectively for "*yarns* made wholly or in part of wool," "*cloths*, and *knit fabrics*, made wholly or in part of wool," "*blankets* and *flannels for underwear* composed wholly or in part of wool," "*women's and children's dress goods, coat linings, Italian cloths and goods of similar description and character* composed wholly or in part of wool," *clothing, ready made, and articles of wearing apparel* of every description, including *shawls, whether knitted or woven* and *knitted articles* of every description * * * *felts* * * * composed wholly or in part of wool," "*webbings, gorings suspenders, braces, bandings, beltings, bindings, braids*, galloons edgings, insertings,

flouncings, fringes, gimps, cords and tassels, laces, embroideries, etc. * * * made of wool or of which wool is a component part," "*carpets*," of various kinds, "*mats, rugs for floors, screens, covers, hassocks, bed sides, art squares, and other portions of carpets or carpeting*, made wholly or in part of wool," sheds a great deal more light on what Congress meant by the words wool and wools as used in the Act than does the ingenious academic theory about the "GENERIC" meaning of those words. We respectfully urge that the wording of these later paragraphs in the wool schedule *tends strongly* to prove that what the legislative branch of this government intended to tax as wool, was not a sheep's coat as such, but rather that material which was suitable for use and used for the manufacture of the various articles named, such as blankets, women's and children's dress goods, carpets, etc.

This view of the matter seems to be supported also to some extent by the authorities referred to by the Government as authority, for its position. Thus in the Century Dictionary it is said:

> "The wool or fleece of the sheep furnishes the most important material for clothing in all cold and temperate climates. The felting property from which wool derives its chief value and which is its special distinction from hair, depends in part upon the kinks in the shaft or fibre, but mainly upon the scales with which the surface is imbricated. * * * Wool when shorn is divided into two classes, short wool or carding wool, seldom exceeding a length of three or four inches, and long wool or combing wool, varying in length from 4 to 8 inches, each class being sudivided into a variety of sorts * * *."

In the Standard Dictionary, the definition of wool contains the statement that it is "used chiefly in the manufacture of clothing;" then appears the following:

> "Next to cotton, wool is the most important textile material. As a raw product it varies greatly in length of fibre and firmness of texture, according to the animal from which it is taken. It is prepared for use by sorting, cleaning, oiling and picking, combing or carding, etc., and is then made *either into felt, woolen yarn and cloth, or worsted yarn and cloth.* * * * *Among commercial wools of importance are those obtained from the alpaca* (see Alpaca), *the Llama, the Angora goat,* the camel, and from the cashmere goat of the Himalayas."

The growth on the skins in question is not used as a textile material—nor is it "prepared for use by sorting, cleaning, oiling and picking" but on the contrary, it is prepared by being put by tanners in a lime vat for two weeks, then the hair is taken off the skin, and merely dried and sold in that condition (Rec., p. 17).

6. G. W. Bond who prepared the cabinet of standard samples of wool, in his report to the Secretary of the Treasury on the "classification of *wool*" refers, as pointed out in the Government's brief, top of page 12, to the "three uses" of "wools," viz., *clothing, combing* and *carpet;* and it is manifestly upon the theory that the hair of the camel, Angora goat, and alpaca are respectively fit for carpet and combing purposes that they are classified and taxed with the same duties as other carpet wools and combing wools.

This general intent is further indicated by the fact that although in the paragraph of the Act of 1883, under which *Cooper v. Dobson*, *157 U. S.*, *148* arose, Congress provided for *all* hair of the goat, it limited the corresponding provision in the class 2 combing wool schedule of the tariff act of 1897, *i. e.*, in Paragraph 350, to

> "Class two, that is to say, Leicester, Cotswold, Lincolnshire, Down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used, and also hair of the camel, *Angora* goat, alpaca and other like animals,"

thus clearly indicating an intent to avoid the taxation of common goat hair as wool—evidently upon the theory that Angora goat hair was the only kind of goat hair that was suitable or used for wool purposes.

Moreover, it has been held by the Board in *T. D. 22831*, *G. A. 4872* and in *T. D. 26610*, *G. A. 6113*, and is now settled law that common goat hair, unfit for spinning purposes, is entitled to free entry under the present tariff act. When common goat hair is imported on the skin the free classification is made under Paragraph 664, and when such hair is imported separately it is passed free under Paragraph 571.

T. D. 22831, *G. A. 4872*.
T. D. 26610, *G. A. 6113*.

The only kind of *hair* that Congress enumerated as dutiable at 3 cents per pound under Paragraphs 351, 358 and 360 of the Tariff Act of 1897, was Russian camels hair.

This article in controversy is clearly not Russian camels hair, but, according to the decided prepon-

derance of evidence, is mocha hair, and therefore (unlike the goat hair in the Cooper v. Dobson case) it is not enumerated in the dutiable list, but is comprehended in the clause of the free list, Paragraph 571, relating to hair "not specially provided for."

There is no "perhaps" about some of the protests claiming under Paragraph 571, because that is the fact, and the Board specifically so found (Rec., p. 28, fol. 50).

Our contention that not only the clearly established trade denomination of this merchandise, mocha hair, and the evidence that it would never constitute a good delivery under an order for wool of any kind, but also its commercial adaptability or non-adaptability to wool uses should be considered in determining whether it is classifiable in the wool schedule, seems to be given some support by the decision of the Circuit Court of Appeals, Second Circuit, in the case of *United States v. Bennett, 66 Fed. Rep., 299.* There it was held, that raw angora goat skins with the hair on, being *for all commercial purposes* undressed fur skins, it being *unprofitable to separate the hair from the skins and to use the hair as wool*, should not be classified as "wools on the skin" under Paragraph 387 of the Tariff Act of 1890, but were free of duty under Paragraph 588 of that Act as "fur skins not dressed in any manner.

II.

It should be noted that the decision of the Board of General Appraisers in the case at bar (opinion by McClelland, G. A.) appears on page 28 of the record, and that by the additional testimony taken

in the Circuit Court (pages 32-39) it was clearly proven, as we claim, that the decision of the Board of General Appraisers (known as in *re* Littauer Bros., G. A. 4593), which is printed as an exhibit on pages 29 to 31 of the record was irrelevant, for the reason that it related to a different commodity, which was admittedly suitable for wool uses, and which, altho imported by the petitioners in this case was never protested on by them.

III.

In answer to the argument for the Government that the word "wool" or "wools" as used in the tariff law is generic, and that it should not be interpreted according to either any commercial or trade meaning or its ordinary meaning, it seems necessary to cite merely

Cadwalader v. Zeh, 151 U. S., 171, 176,

wherein a list of various articles was given which had been construed to have a commercial meaning —including United States v. Casks of Sugar, 8 Pet., 277; "sugar," and "syrup," "wool" and "worsted," *Elliott v. Swartwout, 10 Pet., 137.*"

In *Ernshaw v. Cadwalader, 145 U. S., 247*, inquiry was directed to what was the "known commercial signification of iron ore."

IV.

The wording of Paragraph 351, upon which our opponent seems to lay so much stress, reads:

> "Class three, that is to say, Donskoi, native South American Cordova, Valparaiso, native Smyrna, Russian camel's hair and all such wools of like character *as have been heretofore*

usually imported into the United States from Turkey, Greece, Syria and elsewhere, excepting improved wools hereinafter provided for."

The word heretofore means, of course, previously to July 24th, 1897; and the fact, as shown by the undisputed evidence in this case, that for many years prior to that date named, merchandise precisely like that in controversy had never been classified as "such wools," shows that in the opinion of the astute customs officials (if indeed it does not amount to an admission on their part and on the part of the Treasury Department that, the growth on Mocha Whitehead Sheepskins was not such wools of like character as had been imported before July 24th, 1897.

And it is a persuasive, or (it might perhaps be truthfully said) a conclusive indication, that **Congress, in framing the provision in the Act of 1897, for "wools of like character as have been heretofore usually imported, etc.," did not intend it to embrace the growth on mocha whitehead sheepskins which had not theretofore been classified as wool of any kind.**

The provisions of the Tariff Acts of 1873 and 1890, corresponding to Paragraph 351 of the 1897 Act above quoted, which were in force during the period that the substance of Mocha Whitehead Sheepskins was admitted free, were as follows:

Act of 1883, Schedule K:

> "Class three, carpet wools and other similar wools—such as Donskoi, Native South American Cordova, Valparaiso, Native Smyrna, and including all such wools of like character as have been heretofore usually imported into the United States, from Turkey, Greece, Egypt, Syria and elsewhere."

Act of 1890, Paragraph *378:*

> "Same as provision in Act of 1883, where quoted, with the added words 'excepting improved wools hereinafter provided for.'"

Where language used in former Tariff Acts has received a uniform and consistent interpretation by the department of the Government charged with the execution of the law (in this case the Treasury Department) and Congress in framing new legislation repeats the language of the prior Acts, it will, in the absence of some more controlling consideration, be presumed to have used the language in the meaning and charged with the construction which has been given to it by the executive department.

Schell v. Fauche, 138 U. S., 572.
Robertson v. Bradbury, 132 U. S., 493.
U. S. v. Dean Linseed Oil Co., 87 Fed. Rep., 456.
Anglo Cal. Bank v. Sec'y of Treas., 76 Fed. Rep., 750.
U. S. v Wotten 50 Fed Rep., 694.
U. S. v. Johnston, 124, U. S., 236, 253.
U. S. v. Hill, 120 U. S., 169, 182-3.
U. S. v. Philbrick, 120 U. S., 52, 59.
Five per cent Cases, 110 U. S., pp. 484-5.
Hahn v. U. S., 107 U. S., 406.
Brown v. U. S., 113 U. S., p. 571.

Also cases cited on page 21 of our main brief.

Dated New York, April 20, 1907.

Respectfully submitted,
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